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LAW OFFICES
COHN AND MARKS

STANLEY S. NEUSTADT
STANLEY B. COHEN
RICHARD M. SCHMIDT, JR.
JOEL H. LEVY
ROBERT B. JACOBI
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MARK L. PELESH
J. BRIAN DE BOICE
ALLAN ROBERT ADLER
CHARLES M. OLIVER

SUSAN V. SACHS
JOHN R. PRZYPYSZNY
WILLIAM B. WILHELM, JR.*

*MEMBER PENNSYLVANIA BAR ONLY

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS

SUITE 600
1333 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20036-1573

TELEPHONE (202) 293-3860
TELECOPIER (202) 293-4827

DIRECT DIAL: (202) 452-4817

February 13, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Dear Mr. Caton

On behalf of Washington Broadcasting Company, licensee of Station WJPA-FM, Washington, Pennsylvania, there is herewith submitted an original and five (5) copies of its Comments in MD Docket No. 95-3.

Sincerely

Lawrence N. Cohn

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Enclosures

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BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 1995	)))	MD Docket NO. 95-3

To: The Commission

COMMENTS

Washington Broadcasting Company ("Washington"), licensee of Station WJPA-FM,[1/] Washington, Pennsylvania, by its attorneys, hereby submits these Comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM") (released January 12, 1995). Washington's basic position is that the Commission's proposal regarding annual license fees to be paid by FM radio stations is flawed for two reasons: (1) it does not take into account the large differences in the sizes of Arbitron Metro Survey Areas ("MSA"), and (2) it arbitrarily and unfairly treats as the same all FM stations of each class within an Arbitron MSA.

[1/] Washington is also the licensee of Station WJPA(AM).

Background

The FM station for which Washington is the licensee, Class A Station WJPA-FM, is designed by the Commission to serve the local community of Washington, Pennsylvania. Washington (1990 U.S. Census population of 15,864) is in basically a rural area. However, because the station is located in Washington County, Pennsylvania, it is within the Pittsburgh, Pennsylvania Arbitron MSA, and therefore the annual license fees for the station, as proposed in the NPRM, is $1,025. If the station were not within an Arbitron MSA, its annual fee would be $375. The proposed annual license fee for the most powerful FM stations licensed to Pittsburgh (or indeed, to any city in the entire United States) is $1,525. Washington believes that WJPA-FM is far more similar to non-Arbitron market class A FM stations which are scheduled to pay an annual fee of $375 than it is to the major market FM stations which are scheduled to pay $1,525, and that the proposed fee structure which requires that it pay $1,025 must be modified accordingly.

I. The Commission Should Base Its Annual Radio License Fee Determinations, at Least in Part, on the Size of the Station's Arbitron MSA.

The FCC has proposed that radio stations in Arbitron Metropolitan Survey Areas ("MSA") should pay 2.7 times the annual fee paid by the same class of station not in an Arbitron MSA. The proposed rates are the same for radio stations (of the same class) in all Arbitron MSA's, <u>regardless</u> of the size of the MSA. However, the FCC has based its proposed fee structure for TV stations on market size (<u>i.e.</u>, separate fees for markets 1-10; markets 11-25; markets 26-50; markets 51-100; and other markets.) Since the Commission has recognized that TV stations in larger markets should pay a higher annual fee than TV stations in smaller markets, Washington believes that the same principle should apply to the radio services as well. The Commission's NPRM is completely (and strangely) silent on this point. Washington believes that the Commission's failure to distinguish between the size of various markets in determining the annual license fee obligation for radio stations is a fundamental flaw in the NPRM and should be corrected by the Commission.

II. <u>The FCC Must Not Treat as Being Alike All FM Stations of the Same Class in an Arbitron MSA</u>.

Washington strongly believes that the fees proposed in the NPRM remain fundamentally unfair and biased against a station such as WJPA-FM which, merely because it falls within an Arbitron MSA, is treated like a significant "in-market" station <u>when, in point of fact, it is not</u>.

A. The Problem with the Commission's Proposal is Illustrated by WJPA-FM's Situation.

Washington has no disagreement with the basic assumption of the NPRM proposal that the stations in an Arbitron MSA are, by and large, more valuable, cover a larger population, have greater revenues, and are more profitable that those which are not within an Arbitron MSA and, therefore, should pay higher annual fees than stations which are not in an Arbitron MSA. But it cannot be disputed by anyone with the slightest knowledge of the broadcasting industry that there are a number of stations which are within an Arbitron MSA but which are completely different from real "in-market" stations in terms of value, population coverage, revenues, profitability, etc. and which, in all fairness, should not be assessed the same annual license fee as their authentic "big brother" colleagues in the Arbitron MSA.

If the blocks which comprise Arbitron MSA's covered small areas, distinctions of this kind would be unnecessary. Distinctions between classes of FM stations (Class C, C1, C2, B, B1, B2, and A) would take into account differences in station characteristics. But Arbitron MSA's are based on U.S. Census Bureau designations of Metropolitan Statistical Areas, which in most parts of the country are based on combinations of various counties (and, in New England, on townships). For example, the Pittsburgh MSA is made up of five counties. Because of the large size of counties, it is entirely possible for a station to be located within a county which is considered part of a U.S. Census MSA, and therefore within an Arbitron MSA, while the station is not realistically part of the Arbitron MSA for radio purposes.

Station WJPA-FM is a good example of such a station. WJPA-FM's transmitter site is located approximately 28 kilometers (17 miles) from the nearest part of the city limits of Pittsburgh, and its 1.0 mv/m contour does not cover any part of Pittsburgh. WJPA-FM's 1.0 mv/m contour encompasses less than 15% of the age 12 or over population within the Pittsburgh Arbitron MSA. Not surprisingly, WJPA-FM is not able to obtain advertising from Pittsburgh or Pittsburgh MSA advertisers (outside its home county). The fact is that WJPA-FM is not a Pittsburgh or a Pittsburgh MSA station in any meaningful sense, and the annual license fee which the Commission collects from Washington for WJPA-FM should not be premised on the entirely false assumption that it operates as a Pittsburgh Arbitron MSA station when in fact it does not.

Washington understands and appreciates that the Commission has proposed a basic change in its 1994 fee schedule to attempt to take into account the differences between stations which serve recognized markets and those in relatively rural areas. The Commission has used the Arbitron MSA as the basis for making this distinction. This distinction is clearly based on a single (and completely legitimate) consideration -- the convenience to the Commission in administrating the fee system.

However, the Arbitron MSA distinction is not adequate to differentiate stations which are in actuality within markets from those which are in actuality in rural areas; therefore, the proposed structure <u>does not achieve any reasonable approximation of fairness</u>. Stated otherwise, it is arbitrary, unreasonably and unfair for the Commission to consider all stations of a class in a particular Arbitron MSA in the same manner; the rules which the FCC adopts must, to be fair, <u>treat stations in rural parts of an Arbitron MSA more like stations which are not located in an MSA than like stations of the same class which are in or near the center of a significant population area</u>.

To bring this point home to those reading this document within the Capital Beltway, consider Class A FM station WSMD (for "Southern Maryland"), licensed to Mechanicsville, Maryland, in St. Mary's County. St. Mary's County is part of the Washington, DC Arbitron MSA. Under the proposed rules, because the station is in an Arbitron MSA, the licensee would be required to pay an annual license fee <u>$1,025</u> which is almost 2/3 the fee which must be paid by the highest power FM station in any market in the county, and

2.7 times as great as the fee required of the same class of station in a community not within an Arbitron MSA. This makes no sense. Although St. Mary's County is part of the Washington, D.C. MSA, Mechanicsville is a small community 28 miles from the closest part of the Beltway, and is 20 miles from the "dominant" "nearby" community of Lexington Park. Mechanicsville is in a largely rural area, and a Class A FM station in Mechanicsville is much more like a station not within any Arbitron MSA than it is like one which truly serves the Washington, D.C. Arbitron MSA. The Commission's annual license fee rules, in order to be fair, simply must take this important difference into account. The Commission should readjust the standards for such stations to be sure that the amount paid by such stations is the $375 paid by Class A FM stations which are not in Arbitron MSA rather than the $1,025 fee proposed for Class A stations which are in fact part of an Arbitron MSA.

B. Washington's Two-pronged Proposal

Washington has given considerable thought to the question of how the Commission's "in market/out-of-market" distinction can be refined to achieve both (1) fairness to rural licensees who happen to be located in a county within an Arbitron MSA, and (2) administrative convenience to the Commission in its fee collection process. To accommodate the foregoing principles, Washington suggests that the Commission, in the rules adopted in this proceeding, specifically allow the licensee of any FM radio station assigned to an Arbitron MSA to request treatment as an "out-of-market" station for annual licensee fee purposes if it can demonstrate, at the time it files its license fee (through the statement of a qualified consulting engineer or other recognized expert in such matters) that:

1. The station's transmitter is located <u>at least 20.0</u> kilometers from the closest point to the city boundary of the city which is the "core community" of the Arbitron MSA in which the station is located; <u>and</u>

2. Station's 1.0 mv/m contour covers <u>less than 20%</u> of the population age 12 or over within the boundaries of the entire Arbitron MSA in which the station is located.

The reasons for these criteria are evident: If a station is within or close to the boundaries of the "core community" of an Arbitron MSA, the station presumably provides service to the community and it should be considered as part of the community for the Commission's annual license fee purposes. However, if a station is located 20 kilometers from the "core city," it is likely that the station will not really provide service to the major market area. Hence, the 20 kilometer requirement is appropriate.

However, it does not follow that all stations located a considerable distance from the city limits of the "core community" of an Arbitron MSA are unable to serve the MSA; it is possible for a major station with substantial facilities (e.g., power, etc.) to serve a major community even though its transmitter is located at a considerable distance from the city limits of that community. Accordingly, the second prong of Washington's test (i.e., the station coverage within its 1.0 mv/m contour may not exceed 20% of the population age 12 or over within the Arbitron MSA) is included to assure that a station which does in fact provide service to a significant part of an Arbitron MSA is treated as an "in-market" station even if the station is located at a considerable distance from the "core community".

Washington believes that the foregoing refinements would produce much fairer results to FM stations on the periphery of an Arbitron MSA (such as WJPA-FM) than does the Commission's proposed, and overly-simplistic, "in-market/out-of-market" dichotomy.

Washington also believes that the foregoing standards would not be difficult for the Commission to handle from an administrative point of view. First of all, it is doubtful whether more than just a few stations would be able to come close to meeting the standards proposed, and therefore the Commission would not be confronted with a large number of requests for treatment as an "out-of-market" station. Second, once the Commission passes upon a station's request from treatment as an "out-of-market" facility, there would be no need to revisit that determination until a new decennial U.S. Census was taken, until the "core community" changed its boundaries, or until the station changed its facilities. Third, the proposed showings would be relatively easy to evaluate. The distance from a station's transmitter site to the "core community" boundary lines would not be difficult to determine. Similarly, it would not be difficult to compute the relationship between the number of total individuals 12 or over within a station's coverage area and the number of such individuals within the Arbitron MSA in which the station is located. Therefore, it should not be difficult for an appropriate licensee to make submissions to show that, although its FM station is within an Arbitron MSA, it should be assessed the lower annual fee associated with FM stations of the same class which are not within the Arbitron MSA. It should also not be difficult for the Commission to evaluate such showings when made by licensees.

Conclusion

There is no reason why, if market size is relevant for determination of TV annual license fees, it is not likewise relevant to the determination of radio annual fees. The FCC should make appropriate adjustments in the final annual license fee rules for radio stations to take this factor into account.

The Commission's proposal to base annual license fee assessments for FM stations of a particular class strictly on the Arbitron "in market/out-of-market" distinction is patently arbitrary and unfair. Washington has shown that a perfectly valid alternative exists which would remedy at least some of the inequities in the proposed system and which would not be difficult for the Commission to implement. Accordingly, the Commission should adopt Washington's proposal which would allow an FM station within an Arbitron MSA to be treated the same for purposes of the annual license fee as stations which are not within the Arbitron MSA if it is able to meet <u>both</u> of the criteria set forth in Section II-B above.

Respectfully submitted

Washington Broadcasting Company

Lawrence N. Cohn

Lawrence N. Cohn
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036
(202) 293-3860

Date: February 13, 1995